IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 805 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABLABHAI MANSUKHBHAI NAYAK - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MS NITA C BANKER for Appellant(s) : 1,
MR KP RAWAL, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 14/02/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This appeal arises out of the judgment and order rendered by Sessions Court, Surat (Camp at Vyara) in Sessions Case No.132 of 1998 convicting the appellant for the offence of murder of his wife Sumitra and for the offence of causing hurt to Miraben on 22nd March, 1998 at about 1.00 a.m. at Bhilwad Faliya of village Terwad with the help of a 'Koyta' (sugarcane cutting implement). The appellant is ordered to undergo imprisonment for life and to pay a fine of Rs.400/-, in default, to undergo S.I. for one month for the offence of murder and is ordered to undergo R.I. for two years and to pay a fine of Rs.200/-, in default, to undergo S.I. for 15 days for the offence of hurt punishable under Section 324 of I.P.C. The Trial Court ordered both the sentences to run concurrently and to give benefit of set-off to the accused. The judgment was rendered by the Trial Court on 7th July, 1999.

2. The facts of the case in brief are that the appellant was married to Sumitra. He suspected her fidelity to him and in that context, he caused multiple injuries to the deceased on her neck with 'Koyta' at the time of the incident. On hearing shouts of the deceased, Miraben, staying next-door, rushed to the place of incident and tried to intervene. On her doing so, the appellant turned on her and inflicted 'Koyta' blows at Miraben also, causing hurt on her forehead, right wrist, left fingers and right thigh. In this context, Miraben

lodged F.I.R. with the police at Vyara, on the basis of which offence was registered and after collecting evidence, chargesheet was filed before J.M.F.C., Vyara. J.M.F.C., Vyara, in turn, committed the case to the Court of Sessions as the case was triable exclusively by the Court of Sessions. The Sessions Court framed charge at Exh.5 to which the accused pleaded not guilty and claimed to be tried.

2.1 The Trial Court, after considering the evidence led by the prosecution, concluded that the prosecution was successful in establishing both the charges against the appellant and recorded conviction therefor. The Trial Court awarded sentences, as stated in earlier part of this judgment. Aggrieved by the said judgment and order, the convict has preferred this appeal.

3. We have heard learned advocate Ms. Banker for the appellant and learned APP Mr. Rawal for the respondent – State.

4. Ms. Banker submitted that the Trial Court committed an error in convicting the appellant for the offence of murder. It has come in evidence that there was a quarrel between the appellant and his deceased wife on the question of fidelity of the deceased and that must have enraged the appellant and he may have inflicted the blows in heat of passion and, therefore, the case would fall under Exceptions to Section 300 of I.P.C.

punishable under Section 304 of I.P.C. She, therefore, submitted that the conviction for murder may be set aside and may be altered to one under culpable homicide not amounting to murder. She submitted that the appellant may, therefore, be awarded imprisonment for the period already undergone.

5. Learned APP Mr. Rawal has opposed this appeal. According to him, there is no evidence on record to show that there was a sudden fight or there was a provocation given by the deceased to the appellant at the time of the incident, as a result of which the appellant lost self-control and in heat of passion, committed the offence and, therefore, the conviction recorded by the Trial Court is just, legal and proper and may not be interfered with.

6. We have before us the record and proceedings of the case which we have examined keeping in light the rival side contentions.

7. The medical evidence led by the prosecution is in the form of deposition of Dr. Shantilal Bhurabhai Chaudhary (Exh.8), post-mortem notes (Exh.9), evidence of Dr. Sulakshanadevi Dharmendra Nahad (Exh.29) and medical certificate in respect of Miraben at Exh.30.

7.1 The evidence of Dr. Shantilal Bhurabhai Chaudhary (Exh.8) and Exh.9 reveal that the deceased

had as many as 14 external injuries. Out of these 14 injuries, 3 injuries were on neck which were sharp cutting injuries, all of which were 1" deep and had cut Carotid arteries, muscles, Jugular veins, voice -box etc. There was a sharp cutting wound on the neck where a vertebra was cut. There was a sharp cutting injury on occipital region, left cheek, left bicep, right bicep and left clevical. Besides this, there were contused lacerated wounds on left elbow, right elbow and left forearm. All these injuries were ante-mortem and were sufficient in ordinary course of nature to cause death. The injuries were possible with Muddamal 'Koyta'.

7.2 So far as Miraben is concerned, she has been examined by Dr. Sulakshanadevi Dharmendra Nahad examined at Exh.29. The doctor found a C.L.W. on her thigh and a C.L.W. on her forehead. She says that the injury was possible with Muddamal 'Koyta'. She asserts that the injuries were possible with Muddamal 'Koyta' during cross-examination. The cause of death of the deceased is indicated to be shock and haemorrhage due to cutting of carotid arteries, Jugular veins, nerves and other small vessels of neck.

7.3 The above medical evidence would indicate that deceased Sumitraben met with a homicidal death and that hurt was caused to Miraben.

8. Witness Gomiben is examined at Exh.10. She

is a neighbour of the deceased and the accused. She says that on the day of incident, she heard a cry from Miraben and went towards that side. Her husband also joined her. She states that when she reached there, Sumitraben was already dead and the accused – appellant had given a blow of 'Koyta' to deceased Sumitraben. She says that the accused – appellant was standing over there with 'Koyta' in his hand. She says that Miraben was also there and had suffered hurt on her forehead, legs and hand. During cross-examination, she admits that she has not seen the incident but she learnt about the details of the incident as Miraben told her about it, implicating the appellant.

8.1 Vechiya Payala (Exh.11) is another witness who has reached the place of incident immediately on hearing shouts of Miraben. He says that Sumitra and accused Babla were quarreling and Miraben tried to intervene and save Sumitra and the accused – appellant Babla had a 'Koyta' in his hand. When he went there, Sumitra was lying on the floor. She had suffered injuries on her neck and was bleeding. When Miraben tried to intervene, she was also caused hurt on thighs, hands and head by the accused. During cross-examination, he admits that he learnt about the incident when Miraben told him. He also admits that he has not seen the appellant actually inflicting the blow either on Miraben or Sumitraben.

8.2 Rasoolbhai Bondaliya Bhil (Exh.12) is also a

witness who reached the place of incident to find Sumitra's dead body lying. She had sustained injuries on her neck as well as legs. She was bleeding profusely. He identified Muddamal Article No.6 – 'Koyta' which he had seen in the hands of the appellant standing at the place of incident. During cross-examination, he admits that when he went to the place of incident, Sumitraben was already dead and that he did not see the appellant inflicting blow on her and Miraben.

8.3 Bondaliya Janiya (Exh.13) says that he learnt that the appellant had murdered Sumitra. Sumitra had suffered severe injuries on her neck and was bleeding. The accused was also there and had 'Koyta' in his hand. During cross-examination, he admits that he had not seen hurt being caused to Sumitra or Miraben but he learnt about the incident on hearing shouts of Miraben. He asserts during cross-examination that he learnt that the accused had caused hurt to deceased Sumitra as the accused himself told him about it.

8.4 Bhagubhai Ratanjibhai is examined at Exh.14. He says that Bondaliya Janiyabhai had come to call him and, therefore, he went to the place of incident. They went to the house of Babla, accused – appellant. Babla had a 'koyta' in his hand and upon his asking/advice, the accused threw away the 'koyta'. He noticed that Miraben had sustained injuries on her forehead, legs and thighs. The witness is cross-

examined and admits that he had not seen the incident himself. He denies the suggestion that some unknown person had come and caused injuries to the deceased. According to him, if that was so, the appellant would not have been standing there with a 'koyta'.

8.5 The first informant who reached the place of incident was first in point of time and who sustained injury at the hands of the appellant is examined at Exh.28. She also happens to be the first informant in the F.I.R. which is at Exh.20. She states in her deposition that the accused caused injury to deceased Sumitra by 'koyta'. She went there on hearing shouts of Sumitra as they are next-door neighbours. On hearing shouts, she rushed to the house of Sumitra and saw the appellant causing hurt to Sumitra with 'koyta'. The injury was caused on her neck. She also saw the appellant giving repeated blows to deceased Sumitra. She says that the accused also caused hurt to her on her forehead, right hand and thigh. She says that Bhagubhai, Bondaliyabhai, Rasoolbhai etc. came to the spot and apprehended the appellant. Then she went to Vyara Police and lodged the F.I.R. which is at Exh.20. She has been cross-examined at length and she sticks to her version about the appellant being responsible for the hurt and for the death of the deceased by causing injuries with 'koyta'. She admits in the question put by the court that when her statement was recorded, she had stated that it was Babla who caused death of Sumitra.

She says that F.I.R. was dictated by Bhagubhai who gave dictation on the basis of information given to him by Bondaliya who was informed about the correct facts by her.

9. What emerges from the above evidence is that there is absolutely no evidence to show that at the time of the incident, any provocation was given to the appellant by the deceased that the appellant was deprived of the power of self-control because of grave and sudden provocation and that the provocation was given by the deceased. There is no other material to infer that the act was committed by the appellant without pre-meditation in a sudden fight, in heat of passion upon a sudden quarrel and, therefore, it is difficult to accept that any of the exceptions to Section 300 of I.P.C. would be attracted. When the appellant is shown to have caused multiple injuries with a deadly weapon like 'koyta' on vital parts of the body of the deceased like neck, head etc., knowledge can certainly be inferred on the part of the appellant that he is likely to cause death of the deceased and that his act is so imminently dangerous that it must have, in all probability, caused death of the deceased. The Trial Court was, therefore, justified in recording conviction of the appellant for the murder of Sumitra.

10. So far as the injuries caused to Miraben are concerned, there is ample evidence to show that she

had sustained C.L.W. on her thigh and C.L.W. on her forehead. The said injuries were possible with Muddamal 'koyta'. Miraben herself had deposed to the effect that the appellant caused injury to her and, therefore, the Trial Court was justified in recording conviction of the appellant under Section 324 of I.P.C. as well.

11. We do not find any merit in the appeal for the reasons stated hereinabove. The appeal, therefore, must fail and stands dismissed. The judgment and order dated 7th July, 1999 rendered by learned Additional Sessions Judge, Surat (Camp at Vyara) in Sessions Case No.132 of 1998 stands confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

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